

U. S. DEPARTMENT OF LABOR  
Employees' Compensation Appeals Board

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In the Matter of MARLYN A. EATO and U.S. POSTAL SERVICE,  
POST OFFICE, New Brunswick, NJ

*Docket No. 97-2547; Submitted on the Record;  
Issued August 11, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant filed a claim alleging that she developed carpal tunnel syndrome due to factors of her federal employment. The Office accepted appellant's claim for right carpal tunnel syndrome on August 6, 1991. Appellant requested a schedule award. By decision dated September 21, 1995, the Office granted her a schedule award for eight percent permanent impairment of her right upper extremity. Appellant requested a review of the written record and by decision dated February 15, 1996, the hearing representative affirmed the Office's September 21, 1995 decision. She requested reconsideration on February 13, 1997. By decision dated April 30, 1997, the Office declined to reopen appellant's claim for review of the merits.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> Inasmuch as appellant filed her appeal with the Board on July 28, 1997, the only decision properly before the Board is the Office's April 30, 1997 decision, denying appellant's request for reconsideration.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2).

Office.<sup>2</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.<sup>3</sup>

In this case, appellant attempted to show that the Office had not considered a point of fact, alleging that the Office improperly cited to incorrect pages of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>4</sup> in determining the degree of her permanent impairment.<sup>5</sup> Appellant also alleged that the Office improperly calculated her award as the Office failed to consider recurrent wrist pain<sup>6</sup> and as the Office failed to add the percentages of impairment correctly.

In a report dated June 21, 1995, appellant's attending physician, Dr. Ronald J. Potash, a Board-certified surgeon, provided the impairment ratings for appellant's wrist. He stated that appellant denied wrist pain or paresthesia. The Office, therefore, did not include an impairment for pain in its schedule award determination. Dr. Potash found that appellant lacked 30 degrees of wrist extension. The Office medical adviser applied Figure 26, page 36 of the A.M.A., *Guides* to determine a 5 percent impairment in the right wrist due to lack of extension. Dr. Potash did not indicate any further impairment of appellant's wrist.

Dr. Potash indicated appellant had a loss of flexion of the metacarpophalangeal (MCP) joint of 30 degrees, a loss of extension of the MCP joint of 15 degrees and loss of 30 degrees of flexion of the interphalangeal (IP) joint. The Office medical adviser applied the A.M.A., *Guides* and found that the reported loss of flexion of the MCP joint was a 3 percent impairment in accordance with Figure 13, page 27 of the A.M.A., *Guides*. He further found that a loss of 15 degrees of extension was a 1 percent impairment according to the same Figure and that loss of 30 degrees of flexion of the IP joint was 4 percent impairment in accordance with figure 10, page 26 of the A.M.A., *Guides*. The Office medical adviser found that appellant had eight percent impairment of her right thumb and five percent impairment to her right wrist. The Office medical adviser found that an eight percent impairment of the right thumb is a three percent impairment of the hand and upper extremity in accordance with Tables 1 and 2, pages 18 and 19 of the A.M.A., *Guides*. Therefore he added three and five to reach eight percent impairment of the right upper extremity.

As appellant has not raised a matter not previously considered, her reconsideration request was insufficient to require the Office to reopen appellant's claim for review of the merits and the Office properly denied appellant's request for reconsideration.

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<sup>2</sup> 20 C.F.R. § 10.138(b)(1).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> A.M.A., *Guides*, (4th ed. 1993).

<sup>5</sup> The Office referred appellant's allegations to the Office medical adviser who concluded that her claims were not supported by the A.M.A., *Guides*.

<sup>6</sup> Appellant's attending physician completed a report on November 5, 1993 and indicated that appellant denied wrist pain.

The decision of the Office of Workers' Compensation Programs dated April 30, 1997 is hereby affirmed.

Dated, Washington, D.C.  
August 11, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member